

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BERNARD SMITH,

Petitioner,

v.

JAMES ABBOT WARDEN COLORADO  
DEPARTMENT OF CORRECTIONS  
CANNON CITY COLORADO,

Respondent.

Case No. C04-5767FDB

ORDER ADOPTING REPORT  
AND RECOMMENDATION

The Court having reviewed the Report and Recommendation of the Hon. J. Kelly Arnold United States Magistrate Judge, and the remaining record, and there being no objections to the Report and Recommendation, does hereby find and Order:

- (1) The Court adopts the Report and Recommendation;
- (2) The petition is **DISMISSED WITHOUT PREJUDICE**. This petition is unexhausted.
- (3) The clerk is directed to send copies of this Order to Petitioner, counsel for respondent and to the Hon. J. Kelley Arnold.

DATED this 28<sup>th</sup> day of July 2005.

  
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE